

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION**

Kurt E. Wullschleger,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 12R 323

**Decision Reversing  
County Board of Equalization**

**GENERAL BACKGROUND & PROCEDURAL HISTORY**

1. The Subject Property is a residential parcel located at 128 Ginger Cove Road, Valley, Douglas County, Nebraska. The Subject Property’s legal description is: GINGER COVE ADD LOT 128 BLOCK 0 IRREG.
2. The Douglas County Assessor assessed the Subject Property at \$439,800 for tax year 2012.
3. Kurt E. Wullschleger (herein referred to as the “Taxpayer”) protested this value to the Douglas County Board of Equalization (herein referred to as the “County Board”) and requested a valuation of \$343,244.
4. The County Board determined that the assessed value of the Subject Property was \$439,800 for tax year 2012.
5. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (herein referred to as the “Commission”).
6. A Single Commissioner hearing was held at the Omaha State Office Bldg., 1313 Farnam, Omaha, Nebraska, before Commissioner Thomas D. Freimuth, on September 5, 2013.
7. Kurt E. Wullschleger, the Taxpayer, was present at the hearing.
8. Larry Thomsen and Kevin Corcoran, employees of the Douglas County Assessor’s Office, were present for the County Board.

**SUMMARY OF HEARING DOCUMENTS & STATEMENTS**

9. The Property Record File contained in the Assessment Report submitted by the County Board at the hearing indicates that the Taxpayer purchased the Subject Property for \$305,000 in 1996. It also indicates that the 2,959 square foot residence situated on the Subject Property was constructed in 1983 and had an effective age of 29 years for 2012 tax year purposes.
10. Following is the Subject Property’s assessment history contained in the County’s Assessment Report at page 11:

| YEAR EFFECTIVE | DATE OF CHANGE | LAND VALUE | IMPROVE VALUE | TOTAL VALUE | REASON                |
|----------------|----------------|------------|---------------|-------------|-----------------------|
| 2013           | 3/9/2013       | 70300      | 319700        | 390000      | Inspection Review     |
| 2012           | 8/7/2012       | 70300      | 369500        | 439800      | Board of Equal.       |
| 2012           | 3/9/2012       | 70300      | 369500        | 439800      | County Reappraisal    |
| 2008           | 3/10/2008      | 70300      | 371500        | 441800      | County Reappraisal    |
| 2005           | 3/19/2005      | 42500      | 362700        | 405200      | County Reappraisal    |
| 2001           | 3/16/2001      | 42500      | 345600        | 388100      | County Reappraisal    |
| 2000           | 3/12/2000      | 42500      | 291600        | 334100      | MVU (Acronym Unknown) |
| 1999           | 7/2/1999       | 42500      | 275700        | 318200      | Board of Equal.       |
| 1999           | 5/21/1999      | 42500      | 391600        | 334100      | State Board of Equal. |
| 1999           | 3/9/1999       | 40500      | 277700        | 318200      | PRA (Acronym Unknown) |

11. The Assessment Report indicates that the County Assessor's \$439,800 notice value for tax year 2012, which was adopted by the County Board as noted in the chart above, attributes \$70,300 to land and \$369,500 to the Subject Property's improvement component. The Assessment Report also indicates that the County Assessor's 2012 valuation of the Subject Property's improvement component is based on a sales comparison approach mass appraisal model derived from market area arm's-length sales and multiple regression analysis.<sup>1</sup> Multiple regression analysis assigns value to physical and locational characteristics of real property based on correlation of such characteristics with market area sales.<sup>2</sup> The Assessment Report contains a document entitled "Market Calculation Detail" that sets forth the value of each of the various mass appraisal model characteristics assigned to the Subject Property's improvement component.<sup>3</sup>
12. The County Board's determinations for tax years 2008 through 2011 equaled the County Assessor's \$441,800 reappraisal of the Subject Property in March of 2008, several months prior to time in September of 2008 when the general public became aware of the economic crisis due to the failure of Lehman Brothers, a large financial institution. This March 2008 reappraisal in the amount of \$441,800, which was adopted by the County Board on August 7, 2008, reflects an approximate 10% increase in comparison to the County Assessor's \$405,200 reappraisal in 2005.
13. The Taxpayer asserted that the actual value of the Subject Property for tax year 2012 equaled the \$390,000 appraisal he obtained in February 2012. The Taxpayer did not bring this appraisal to the hearing before the Commission. According to the Referee Notes contained in the Assessment Report, the Taxpayer also did not submit this appraisal during the tax year 2012 protest period for use by the County Board's Referees. The Taxpayer stated, however, that he submitted the \$390,000 appraisal to the County for tax year 2013 purposes. This statement is consistent with the above-charted action by the County in reducing the Subject Property's assessed value to equal the \$390,000 appraisal value effective March 9, 2013.<sup>4</sup>
14. In further support of this opinion of value, the Taxpayer submitted the following: (1) a document entitled "Pricing/Valuation Analysis, June 2012;" (2) a document entitled

<sup>1</sup> Assessment Report, pg. 6.

<sup>2</sup> *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at pgs. 416, 427.

<sup>3</sup> Assessment Report, pg. 10.

<sup>4</sup> See, Assessment Report, pg. 11.

“Valuation/Equalization Summary for 128 Ginger Cove Rd;” and (3) an aerial photograph of the Ginger Cove lake development.

15. The Taxpayer’s Pricing/Valuation Analysis document asserts that the increase in selling price per square foot of homes in the Ginger Cove lake development since 2004 had been greater for smaller homes versus larger dwellings. The document also asserts that this “reflects an apparent trend at Ginger Cove for preference of smaller ‘weekend’ homes versus larger ‘full-time homes.’”
16. The Taxpayer’s Pricing/Valuation Analysis document provides an analysis of 13 sales in the Ginger Cove lake development for the period 2010 through 2012. The document concludes that the average sale price of homes during that period under 2,000 square feet amounted to \$261 per square foot, and that the average assessed value of these homes amounted to 214 per square foot. In contrast, with respect to homes over 2,000 square feet, the document concludes that the average sale price amounted to \$142 per square foot, while the assessed value averaged \$155 per square foot (109% of current selling price).
17. The Taxpayer did not provide Property Record Files for the properties analyzed above.
18. The Taxpayer’s stated that the Subject Property was listed for sale in the summer of 2012 at an asking price of \$460,000, and that this action generated only one tenuous offer in the amount of \$400,000 prior to the end of the listing later in 2012. The Taxpayer re-listed the Subject Property in 2013 at an asking price of \$460,000, but this listing expired after 90 days without a sale.
19. Assessment Report at page 9 includes reference to the sale of three homes in the Ginger Cove lake development. In comparison to the Subject Property’s 2,959 square foot gross living area (“GLA”), these alleged comparable County sales involved homes with GLAs as follows: 1,648, 1,234 and 1,960. Due to the significant size differences, the Taxpayer asserted that these properties were not comparable to the Subject Property.
20. The Assessment Report at page 7 states that the most recent County inspection occurred in April of 2009.
21. The County Board’s Referee Report, which is attached at the end of the County’s Assessment Report, contains the following statement by the first Referee to review the Subject Property for tax year 2012 purposes (this Referee’s recommendation was not approved by the Referee Coordinator – the Commission notes, however, that the following is consistent with the conclusions reached by the Taxpayer in his Pricing/Valuation Analysis noted above):

Assessed values have not kept pace with actual market sales in recent years. Smaller homes have been under assessed while larger homes have been over assessed according to recent sales data. This disparity has created a situation where equalization is required.

### **STANDARD OF REVIEW**

22. The Commission’s review of the determination of the County Board of Equalization is de novo.<sup>5</sup> “When an appeal is conducted as a ‘trial de novo,’ as opposed to a ‘trial de novo on the record,’ it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not

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<sup>5</sup> See, Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008).

been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal.”<sup>6</sup>

23. When considering an appeal a presumption exists that the “board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action.”<sup>7</sup> That presumption “remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.”<sup>8</sup>
24. The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.<sup>9</sup>
25. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>10</sup>

### GENERAL VALUATION LAW

26. A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.<sup>11</sup>
27. “Actual value, market value, and fair market value mean exactly the same thing.”<sup>12</sup>
28. Taxable value is the percentage of actual value subject to taxation as directed by Nebraska Statutes section 77-201 and has the same meaning as assessed value.<sup>13</sup>
29. All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>14</sup>
30. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.<sup>15</sup>
31. Nebraska Statutes section 77-112 defines actual value as follows:

Actual value of real property for purposes of taxation means the market value of real property in the ordinary course of trade. Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach. Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm’s length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real

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<sup>6</sup> *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

<sup>7</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>8</sup> *Id.*

<sup>9</sup> Neb. Rev. Stat. §77-5016(8) (2010 Cum. Supp.).

<sup>10</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>11</sup> Cf. *Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

<sup>12</sup> *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

<sup>13</sup> Neb. Rev. Stat. §77-131 (Reissue 2009).

<sup>14</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

<sup>15</sup> Neb. Rev. Stat. §77-201(1) (Reissue 2009).

property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.<sup>16</sup>

## VALUATION ANALYSIS

32. The Taxpayer expressed concern regarding insufficient consideration of the economic crisis by the County. General guidance in this regard in the mass appraisal context is contained in *Property Assessment Valuation*, which is published by the International Association of Assessing Officers.<sup>17</sup> For example, *Property Assessment Valuation* states that assessment officials are required to review factors such as foreclosure rates and vacancy rates as a part of developing and maintaining market area databases.<sup>18</sup> Additionally, in addressing mass appraisal techniques such as the model used by the County to value the Subject Property, *Property Assessment Valuation* states as follows:

Although the structure of a mass appraisal model may be valid for many years, the model is usually recalibrated or updated every year. To update for short periods, trending factors may suffice. Over longer periods, as the relationships among the variables in market value change, complete market analyses are required. **The goal is for mass appraisal equations and schedules to reflect current market conditions.**<sup>19</sup>

33. The New Jersey Tax Court stated as follows regarding consideration of “current market conditions” in a 2013 opinion that reduced the assessed value of the Borgata casino from \$2.26 billion to \$880 million in tax year 2009 and to \$870 million in tax year 2010 due to the adverse impact of the national economic crisis and increased gaming competition (the \$2.26 billion assessment stemmed from a reappraisal for tax year 2008):

The national economy began to soften in late 2007, primarily due to the subprime housing crisis. By October 1, 2008, the economy suffered a significant downturn triggered by the collapse of the mortgage markets and the failure of Bear Stearns and Lehman Brothers. The government-sanctioned bailout of Bear Stearns as a banking institution “too big to fail” set off alarms concerning the stability of the American banking system. The mid-September 2008 collapse of Lehman Brothers led to a sharp drop-off in the stock market and the beginning of the worst recession since the Great Depression. . . .

By October 1, 2009, the national economic condition had further deteriorated. According to one expert who testified at trial “as of October 1, 2009, the macro economy had entered into what many commentators termed a ‘New Normal,’ meaning that the developed nations would enter

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<sup>16</sup> Neb. Rev. Stat. § 77-112 (Reissue 2009).

<sup>17</sup> *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at pgs. 73 - 83.

<sup>18</sup> *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at pgs. 77 - 83.

<sup>19</sup> *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at p. 417-18 (emphasis added).

into a prolonged period of low growth, high unemployment and a need for de-leveraging. This would add to the uncertainty surrounding the gaming industry in general and in Atlantic City specifically, as of the valuation date.” Unemployment rates started to increase significantly in 2008 and were still rising as of September 2009. This fact is significant because low unemployment rates are indicative of increased consumer spending on such discretionary items as gaming and entertainment. The perception that the nation’s economic trouble was not a transitory downturn, but a long-term recalibration of the economy, was hardening among the public and participants in the financial markets as of the second valuation date.<sup>20</sup>

34. The Illinois Court of Appeal stated as follows regarding consideration of “current market conditions” in a 2012 opinion affirming a lower court’s approval of a \$300,000 judicial foreclosure sale of commercial real estate secured by a note with a principal balance in the amount of \$824,540:

Our courts today face a similar situation as that faced by the court in [1937] *Levy* during the Great Depression, in that many properties were purchased during a time when real estate values greatly increased (referred to as “the real estate bubble”) **and those same properties plummeted in value after 2006 [and] continuing to the present.** Consequently, many property owners owe much more to the lenders than what the property is worth. While this fact is unquestionably tragic, the value of a given piece of property must be determined by considering all of the pertinent factors as they exist at the time of the sale, whether such sale is made in the open market or through a judicial sale as a result of a foreclosure action.<sup>21</sup>

35. The Nebraska Supreme Court has also recently considered “current market conditions” in the aftermath of the economic crisis. In *County of Lancaster v. Union Bank & Trust Co. (In re Estate of Craven)*, the Court upheld a ruling issued by the Lancaster County Court that the \$113,000 purchase price of property sold at an estate auction in a weak real estate market after the decedent’s death in 2008 stemmed from an arm’s length transaction and was the best evidence of value for inheritance tax purposes.<sup>22</sup>
36. This Commissioner is mindful that the events surrounding the economic crisis adversely affected real estate values throughout the United States. Ample literature exists that posits that artificial stimuli such as historically low interest rates and subprime lending quotas triggered real estate asset bubbles throughout the United States that burst in the 2007 – 2008 timeframe and thereafter, and that values in many parts of the country have reset to either mid-1990s or early-2000s levels as a result. I note that the Taxpayer purchased the Subject Property for \$305,000 in 1996, and the County Board placed a valuation of \$405,200 on the parcel from 2005 – 2007 in reliance on a reappraisal by the County Assessor in 2005 (see assessment history chart above). Based on this purchase

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<sup>20</sup> *Marina District Development Co., LLC v. City of Atlantic City*, DOCKET NOS. 008116-2009, 008117-2009, 003188-2010, 003194-2010, at pgs. 1- 2, 8 - 9 (New Jersey Tax Court 2013).

<sup>21</sup> *Sewickley, LLC v. Chicago Title and Trust Company*, 974 N.E.2d 397, 406 (Court of Appeal of Illinois, First District, Second Division 2012) (emphasis added).

<sup>22</sup> *County of Lancaster v. Union Bank & Trust Co. (In re Estate of Craven)*, 281 Neb. 122, 794 N.W.2d 406 (Neb. 2011).

and assessment history, the Taxpayer's \$390,000 appraisal value derived after the 2008 economic crisis appears reasonable, just as it appeared reasonable to the County Board for tax year 2013 when it valued the Subject Property at \$390,000.

37. Based on the County's Assessment Report that indicates the Subject Property was lowered to \$390,000 in tax year 2013, together with all of the other documents and statements submitted at the hearing, the Commission finds sufficient evidence that the County Board's determination for tax year 2012 was arbitrary or unreasonable.<sup>23</sup>
38. The Commission further finds that the best evidence of value in this case is the Taxpayer's \$390,000 opinion of value at the hearing before the Commission.

### GENERAL EQUALIZATION LAW

39. "Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by this Constitution."<sup>24</sup> Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.<sup>25</sup> The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.<sup>26</sup>
40. In order to determine a proportionate valuation, a comparison of the ratio of assessed value to market value for both the subject property and comparable property is required.<sup>27</sup>
41. Uniformity requires that whatever methods are used to determine actual or taxable value for various classifications of real property that the results be correlated to show uniformity.<sup>28</sup> Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value.<sup>29</sup>
42. The constitutional requirement of uniformity in taxation extends to both rate and valuation.<sup>30</sup> If taxable values are to be equalized it is necessary for a Taxpayer to establish by "clear and convincing evidence that valuation placed on his or her property when compared with valuations placed on similar property is grossly excessive and is the result of systematic will or failure of a plain legal duty, and not mere error of judgment [sic]."<sup>31</sup> "There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity."<sup>32</sup>

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<sup>23</sup> Assessed value, as determined by the County Board for tax year 2012, was based upon the evidence at the time of the Protest proceeding. At the appeal hearing before the Commission, both parties were permitted to submit evidence that may not have been considered by the County Board at the 2012 protest proceeding.

<sup>24</sup> *Neb. Const.*, Art. VIII, §1.

<sup>25</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

<sup>26</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991); *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, (1999).

<sup>27</sup> *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

<sup>28</sup> *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

<sup>29</sup> *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge County Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

<sup>30</sup> *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

<sup>31</sup> *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

<sup>32</sup> *Id.* at 673, 94 N.W.2d at 50.

43. “To set the valuation of similarly situated property, i.e. comparables, at materially different levels, i.e., value per square foot, is by definition, unreasonable and arbitrary, under the Nebraska Constitution.”<sup>33</sup>

### EQUALIZATION ANALYSIS

44. As indicated above, an order for equalization requires evidence that either: (1) similar properties were assessed at materially different values;<sup>34</sup> or (2) a comparison of the ratio of assessed value to market value for the Subject Property and other real property **regardless of similarity** indicates that the Subject Property was not assessed at a uniform percentage of market value.<sup>35</sup>
45. The Commission notes that section 8 of the Order for Single Commissioner Hearing issued to the parties in this matter at least 30 days prior to the hearing provides as follows:

*NOTE: Copies of the County’s Property Record File for any parcel you will present as a comparable parcel should be provided so that your claim can be properly analyzed. The information provided on the County’s web page is not a property record file. A Property Record File is only maintained in the office of the County Assessor and should be obtained from that office prior to the hearing.*

46. In substantial part because Property Record Files were not submitted by the Taxpayer for the parcels submitted for consideration, the Commission is unable to perform an equalization analysis. Thus, the Commission finds that the Taxpayer’s assertion that the Subject Property was not equalized with other real property is not supported by sufficient evidence.

### CONCLUSION

47. The Taxpayer has produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
48. The Taxpayer has adduced sufficient, clear and convincing evidence that the determination of the County Board is unreasonable or arbitrary and the decision of the County Board should be vacated and reversed.

### ORDER

IT IS ORDERED THAT:

1. The Decision of the Douglas County Board of Equalization determining the value of the Subject Property for tax year 2012 is Vacated and Reversed.
2. The taxable value of the Subject Property for tax year 2012 is:

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<sup>33</sup> *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

<sup>34</sup> See, *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

<sup>35</sup> See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, 635 (1999).



|              |           |
|--------------|-----------|
| Land         | \$ 70,300 |
| Improvements | \$319,700 |
| Total        | \$390,000 |

3. This decision and order, if no further action is taken, shall be certified to the Douglas County Treasurer and the Douglas County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2012 Cum. Supp.).
4. Any request for relief, by any party, which is not specifically provided for by this order is denied.
5. Each Party is to bear its own costs in this proceeding.
6. This decision shall only be applicable to tax year 2012.
7. This order is effective on August 4, 2014.

Signed and Sealed: August 4, 2014.

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Thomas D. Freimuth, Commissioner